

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	In Proceedings Under
)	Chapter 13
Keith Richard and Nicole Michele Hamilton)	Case Number 11-50488
Debtors.)	
)	Adversary Proceeding No. 14-05011
Keith Richard and Nicole Michele Hamilton)	
Plaintiffs.)	
-vs-)	
U.S. Bank Home Mortgage <i>et al.</i>)	Hon. Marilyn Shea-Stonum
Defendants.)	

**MOTION FOR DEFAULT JUDGMENT TO DETERMINE THAT THE CLAIM OF
FIRSTMERIT BANK, N.A.
SHALL BE FULLY UNSECURED PURSUANT TO 11 U.S.C. SECTION 522(f)
OF THE BANKRUPTCY CODE**

Debtors, by and through their undersigned attorney hereby file the within Motion for Default Judgment to Determine that the Claim of FirstMerit Bank, N.A. shall be fully unsecured.

The Plaintiffs-Debtors (hereinafter "Plaintiffs"), Keith Richard and Nicole Michele Hamilton, by counsel, stated in their Complaint against Defendants, the following:

1. That Plaintiffs are adult individuals residing in Akron, Ohio.
2. That Plaintiffs filed a bankruptcy proceeding under Chapter 13 of Title 11 of the United State Code (hereinafter "Bankruptcy Code") on or about February 14, 2011.
3. That Defendant, U.S. Bank Home Mortgage has a first mortgage on Plaintiffs' residence. is an FDIC lending institution, and its Headquarters are located at 425 Walnut Street. Cincinnati, Ohio 45202.
4. That Defendant, FirstMerit Bank, N.A., has a lien on Plaintiffs' residence for a Judgment Lien, is an FDIC lending institution, and its headquarters are located at 106 South

Main Street, Akron, OH 44308

5. That this action is properly commenced as an adversary proceeding pursuant to Fed. R. Bankr. Proc. 7001.

6. That this adversary proceeding relates to and arises in the Chapter 13 case of the Plaintiffs bearing case number 11-50488, which is currently pending in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division.

7. That this Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. sections 1334 and 157 and the General Order No. 84 entered in this District on July 26, 1984, and the claims set forth herein are core proceedings within the meaning of the United States Bankruptcy Code.

8. That the Court has personal jurisdiction over the Defendants pursuant to Fed. R. Bankr. 7004(f).

9. That this District is the proper venue for this adversary proceeding pursuant to 28 U.S.C. section 1409(a).

COUNT 1: AVOID JUDGMENT LIEN OF
FirstMerit Bank, N.A.

10. That the Plaintiffs own a fee simple interest in real estate located at 1368 Ada Street, Akron, OH 44306, known as parcel number 68-05075. The legal description for said property is attached as Exhibit A and is incorporated herein by reference.

11. That this real property represents the Plaintiffs' personal residence, and it has a market value of \$71,040.00, per the Auditor of Summit County, which is attached as Exhibit B and incorporated herein by reference.

12. That the property is encumbered by a first mortgage to U.S. Bank Home Mortgage in the amount of \$58,814.14, as of the date of the filing of Debtors' petition, per the statement from U.S. Bank attached as Exhibit C and incorporated herein by reference.

13. That the property is further encumbered by a Judgment Lien to FirstMerit Bank, N.A., in the amount of \$23, 374.17, as of the date of the filing of Debtors' petition per their Judgment Lien filed with the Summit County Clerk of Courts, Case No. JL-20110751, filed on January 27, 2011, attached as Exhibit D and incorporated herein by reference

14. That based on the provisions of 11 U.S.C. sections 522(f) and given that the value of Debtors' residence in the amount of \$71,040.00, that there is a first mortgage on said residence in the amount of \$58,814.15, and that Debtor, Keith Richard Hamilton's, exemption in his homestead is \$20,200.00, the Judgment Lien of FirstMerit Bank, N.A. impairs an exemption to which Debtor, Keith Richard Hamilton, would be entitled. Therefore, the Judgment Lien of FirstMerit Bank, N.A. is entirely unsecured.

The Plaintiffs, the Chapter 13 Trustee, and all necessary parties were served with the Complaint in the Adversary Proceeding and no party filed a response or otherwise appeared in opposition to the Complaint in the Adversary Proceeding.

As no party or interested person filed a response or otherwise appeared in opposition to the Complaint in the Adversary Proceeding (hereinafter "Complaint"), the Plaintiffs request that the relief sought in the Complaint, as restated above, determining that the claim of FirstMerit Bank, N.A. shall be fully unsecured pursuant to section 522(f) of the Bankruptcy Code, be granted and an Order granting the same shall be issued.

WHEREFORE, Plaintiffs-Debtors pray that this Motion be granted.

Respectfully submitted,

/s/ *Priscilla A. Schnittke*
KNEVEL & ASSOCIATES CO. LPA
Priscilla A. Schnittke, 0040508
Attorney for Plaintiffs-Debtors
629 Euclid Avenue, Suite 1037
Cleveland, OH 44114
(216) 523-7800
FAX 523-7801
pschnittke@knevel.com

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Motion was electronically transmitted via the Court's CM/ECF system on or about April 24, 2014, to the following who are listed on the Court's Electronic Mail Notice List

United States Trustee, USTP.Region09@usdoj.gov
Keith L. Rucinski, Chapter 13 Trustee, krucinski@ch13akron.com

It is further certified that the following received notice by regular U.S. Mail at the specified address on the date first set forth above:

Plaintiffs-Debtors:

Keith Richard and Nicole Michele Hamilton, 1368 Ada Street, Akron, OH 44306

Creditors/Other Parties in interest:

U.S. Bank Home Mortgage, Attn: Highest Officer, 17500 Rockside Road, Bedford, OH
44146-2099

U.S. Bank, N.A., Attn.: Highest Officer, 425 Walnut Street, Cincinnati, OH 45202

FirstMerit Bank, N.A., Attn.: Highest Officer, 106 South Main Street, Akron, OH 44308

/s/ *Priscilla Schnittke*
Priscilla Schnittke, 0040508
Attorney for Plaintiffs-Debtors
pschnittke@knevel.com

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ELVIN III LTD AGENCY, INC.
8748 Brecksville Road Suite 100
Cleveland, Ohio 44141

DEED OF JOHN M. MACAK

AK BOX

JOHN M. MACAK, executor of the will of Rose V. Macak, by the power conferred by
The Court of Common Pleas, Summit County, Ohio, Probate Division and every other owner,
for one dollar (\$1.00) and other valuable consideration paid, grants, with fiduciary covenants,
to Keith R. Hamilton, an unmarried man, whose fax mailing address is 2915 Pikes Ave , Akron,
Ohio 44314, the following real property:

Description Approved By
TAX MAP COVERAGE TEAM

Situated in the City of Akron, County of Summit and State of Ohio: and known as being all of Lot 806, and the south thirteen and thirty-three hundredths (13.33) feet front and rear of Lot 807 in the P.T. McCourt Allotment, the plat of which is recorded in the Recorder's Office of Summit County, Ohio, in Plat Book 34, Pages 44 to 51 inclusive.

Also known as 1368 Ada Street, Akron, Ohio 44306

Permanent Parcel No. 07#00478-03-015, 000 #68-05015
ANOMAP ROUTING NO.

Prior instrument reference: Volume 6248, Page 360 and 361, Records of Deed.
Recorder's Office, Summit County, Ohio.

WITNESS my signature, this 15th day of June, 1998.

Attest:

Michelle E. Lovens

Witness MICHELE E. STEVENS

Kenneth R. Roberts

Witness Kenn C. Ruffner

**STATE OF SUMMIT)
COUNTY OF OHIO)
ss.**

John M. Macak
John M. Macak, Executor

John M. Macak, Executor

TRANSFERRED IN COMPLIANCE WITH
SEC. 310.202 REV. CODE

\$ 77,166.06 \$ 308.40 FEE
Consideration
JAMES B. McCARTHY BY RJ
County Auditor Deputy Auditor

I, the undersigned, a Notary Public in and for the State and County aforesaid do hereby certify that John M. Macak whose name is signed to the foregoing document has this day personally appeared before me and acknowledged the same.

Given under my hand this 15th day of June, 1998.

TRANFERRED
This instrument is
9 JUL - 2 PH 3:45
JAMES B. McCARTHY
SUFFOLK COUNTY AUDITOR

Kathy C. Thompson
Notary Public
My commission expires:

KEITH C. RUFFNER II, Attorney At Law
(Seal)
Notary Public, State of Ohio
My Commission Has No Expiration Date
Under Section 147.03 RO

EXHIBIT A

54161352
P-991-1 of 1
07/02/1988 08:51P
DE 14.00

[Print](#)[Pay by Phone](#)[Pay On-Line](#)

Kristen M. Scalise CPA, CFE

Fiscal Officer, County of Summit

Note: This is a live file and is subject to constant change.

[Print](#)IAS4 - INTEGRATED ASSESSMENT SYSTEM REVIEW DOCUMENT
Summit County Auditor Division, OH - Tax Year 2011Reference Year
FEB 08, 2014
03:06 PM

BASIC INFORMATION FOR PARCEL 6805075

PARCEL	6805075	ALT_ID	070047803015000	NO CARDS 1
OWNER	HAMILTON KEITH R	INFO		
OWNER		--LISTER--		
DESC.	P T MC COURT LOT 806 ALL LOT 807 S ADA ST	523/862	01-JAN-08	
DESC.		RENTAL REG:	N/A	
DESC.		LUC 510	R - SINGLE FAMILY DWELLING, PLATTED	
ADDR.	1368 ADA ST , AKRON 44306-	CLASS	R	
SPEC FLAG		NBR	30100013	
HOMESTEAD	No	2.5% REDUCTION	No	
DISTRICT	68 AKRON CITY-AKRON CSD	INTER-COUNTY	77-0530	

LAND FOR PARCEL 6805075

CODE	ACTUAL	BASE	DEPTH	UNIT	DEP/FAC	INCR/DECR	INFLUENCE	INFLU%	VALUE
01	53	50	110	375	.85	190/190			15600

LOT CODE: 01 = HOUSE LOT

RESIDENTIAL CARD 1 OF 1 FOR PARCEL 6805075

STYHT	1	HT/AC	CENTRAL AIR CONDITION
CONST	ALUMINUM/VINYL	FUEL	GAS
MSRY TRIM		SYSTEM	
TYPE	CAPE COD	ATTIC	FULL FINISHED
YR BUILT	1952	FINBSMT	
EFF YR		REC RM	370
YRREMDLD		FRP PREFB	
TOT RM	5	FRPL OP/ST	
BEDRM	3	BSMT GAR	
FAMILYRM		PHYSICAL	57
FULL/BTH	1	FUNC DEP	
HALF/BTH	1	FUNC RSN	
TOT FIXT ^{RS}	15	ADDN SEP	
BSMT	15	TCOII RSN	
GFLA	11	GRADE	003
SFLA	16	COND (001)	AVERAGE
		TOT RSN	(95%)

31

DESCRIPTION: CAPE COD ALUMINUM/VINYL. 1 STORY WITH 744 SQ FT GROUND FLOOR LIVING AREA AND 1162 TOTAL SQ FT LIVING AREA, BUILT 1952. IT HAS 5 TOTAL ROOMS WITH 3 BEDROOMS, 1 FULL BATHROOM, 1 HALF BATHROOM, A FULL BASEMENT. HEATING IS CENTRAL AIR CONDITION, A FULL FINISHED ATTIC AND THE OVERALL CONDITION IS AVERAGE. THE "ADDN MISC FEATURES" VALUE WAS DERIVED FROM THE ATTIC (2010), THE REC (1710), THE PLUMBING ADDITION CODES: REC ROOM (2800).

ADDITIONS:

LINE B LOWER LEVEL UNFINISHED BSMT WITH FIRST FLOOR FRAME LIVING AREA

LN LW 1S 2N 3R AREA %COMP VALUE
B 50 10 120 8740

EXHIBIT B

SECONDARY:

CODE	YR BLT	SQ FT	MODS	CD
G20	1968	1		A

G20 = GARAGE DETACHED FRAME/BLOCK

%GOOD	%COMP	FUN UNIT	FUN/ RS	ECO/ RS	RCNLD
60		1			4800

SUMMARY ALL CARDS FOR PARCEL 6805075

LAND:	15600	BUILDING:	55440	TOTAL:	71040
ASSESSED LAND:	5460	ASSESSED BLDG:	19400	ASSESSED TOTAL:	24860

SALES INFORMATION FOR PARCEL 6805075

DATE	DOC#	GRANTOR	AMT	SALE	DESC	PARCELS
02-JUL-98	12700	MACAK ROSE V	77100	1	VALID	1

[Print](#)[Pay by Phone](#)[Pay On-Line](#)**2011 SUMMARY INFORMATION FOR PARCEL 6805075**

MAILING ADDRESS	LUC	510
HAMILTON KEITH R	CLASS	R
1368 ADA ST	2.5%	N
AKRON, OH 44306	HMSTD	N
APPRaised VALUE	CAUV	N
71,040	FOREST	N
TAXABLE VALUE	STUB	68187581
24,860	CERT YEAR	N
BANK CODE 41417 US BANCORP SERVICE PROVIDERS	DELQ CONTRACT	N
TREAS CODE	BANKRUPTCY	N
CUR YR REFUND		
PRI YR REFUND		

Beginning Tax Duplicate**Where Do My Tax Dollars Go? Voter Approved Levy Tax**

	<u>First Half Charges</u>	<u>Second Half Charges</u>
Realestate	786.31	786.31
Special Assessment	37.38	37.38
Total	823.69	823.69
Due Date	FEB 17, 2012	JUL 13, 2012

Total Tax Amount Due Reflects Payment & Adjustment To Date

	DELQ	1st HALF	2nd HALF
TOTAL REAL ESTATE AND SPECIAL CHARGES	0.00	823.69	823.69
P & I & ADJ	0.00	0.00	0.00
PAYMENTS	0.00	-823.69	-823.69
AMOUNT DUE	0.00	0.00	0.00
YEARLY AMOUNT DUE:			0.00

2011 TAX BILL DETAILS FOR PARCEL 6805075

PROJ.	ACTION	1st HALF	2nd HALF
DATE	SETTLE #	/CODE	
03-JAN-12	1	DUP/ORG	1220.87
03-JAN-12	1	DUP/RED	-347.19
03-JAN-12	1	DUP/ADJ	873.68
03-JAN-12	1	DUP/RLB	-87.37
03-JAN-12	2	DUP/RLB	0.00
			-87.37

03-JAN-12	1	346768	DUP/SAC	35.94	35.94
03-JAN-12	1	346768	DUP/SAF	1.44	1.44
13-FEB-12	1	346768	PAY/SAC	-35.94	0.00
13-FEB-12	1	346768	PAY/SAF	-1.44	0.00
13-FEB-12	1		PAY/CHG	-786.31	0.00
02-JUL-12	2	346768	PAY/SAC	0.00	-35.94
02-JUL-12	2	346768	PAY/SAF	0.00	-1.44
02-JUL-12	2		PAY/CHG	0.00	-786.31

DELQ REAL ESTATE & ASSESSMENT TAX:	0.00
ADJUSTMENT:	0.00
DECEMBER INTEREST:	0.00
AUGUST INTEREST:	0.00
TOTAL	0.00

REAL ESTATE CHARGES:	786.31	786.31
SPECIAL ASSESSMENT CHARGES:	37.38	37.38
ADJUSTMENT:	0.00	0.00
TOTAL CHARGES:	823.69	823.69

PAYMENTS:	<u>DATE</u>	<u>TYPE</u>	
	13-FEB-12	NML	-823.69
	02-JUL-12	NML	-823.69
TOTAL PAYMENTS:			-823.69
FH/SH AMOUNT DUE:		0.00	0.00

SPECIAL ASSESSMENT:

PROJECTNAME		END	1st HALF	2nd HALF
346768	M03 ST LTG/SWP-9999	2011	37.38	37.38

Click the Following Links to Navigate the Tax Years

[2014](#) [2013](#) [2012](#) [2010](#) [2009](#) [2008](#) [2007](#) [2006](#) [2005](#) [2004](#)



All of us serving you

Home Mortgage



8-726-59193-0089062-018-1-000-011-000-000

KEITH R HAMILTON
1368 ADA ST
AKRON OH 44306-3446



OVERNIGHT DELIVERY:
U.S. Bank Home Mortgage
17500 Rockside Road
Bedford, OH 44146-2099



Contact Information

24 Hour Automated Service: 1-800-240-7890

Customer Service Hours:

Monday - Friday, 7:00 a.m. - 8:00 p.m. ET

Hearing Impaired: 1-800-874-5563

Monday - Friday, 8:00 a.m. - 5:00 p.m. CT



Correspondence Address:
U.S. Bank Home Mortgage
P.O. Box 21948
Eagan, MN 55121



Overnight Payment Delivery Only:
U.S. Bank Home Mortgage
17500 Rockside Road
Bedford, OH 44146-2099

www.usbankhomemortgage.com

Statement Date

10/18/10

Payment Summary

SCHEDULED DUE DATE	11/01/10
We may contact you if payment is not received by scheduled due date.	
LOAN DUE DATE	11/01/10
PAYMENT FACTORS	
Principal & Interest	\$447.17
Tax	\$141.34
Insurance	\$56.17
PMI / MIP	\$24.21
Overage / Shortage	\$23.36
PAYOUT AMOUNT DUE	\$692.25
TOTAL AMOUNT DUE	\$692.25
**IF PAID AFTER 11/16/10, PAY \$719.94	
Payment processing cutoff time is 5:00 p.m. Central Time, Monday - Friday.** Payments received after cutoff time will be applied to your account the next business day. Late charges may be assessed if payments are not received on time as specified in the terms of your mortgage agreement. **Payments due on a weekend or legal holiday will not be assessed a late charge if received by cutoff time the following business day. Cutoff times may vary if choosing alternative payment options.	

Loan Information

ACCOUNT NUMBER	9900773089
PROPERTY ADDRESS:	1368 ADA ST AKRON OH 44306 3446
INTEREST RATE	5.700%
BALANCES	
Principal (Not a Payoff Amount) \$58,814.15	
Escrow \$929.54	
YEAR TO DATE	
Interest Paid	\$2,849.01
Taxes Paid	\$1,696.04

SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION

Transaction Activity

TRANSACTION DESCRIPTION	DUE DATE	TRANSACTION DATE	TOTAL RECEIVED	PRINCIPAL	INTEREST	ESCROW	OPT INS/ PRODUCT	SUBSIDY	SUSPENSE	FEES
Payment	10/10	10/01/10	692.25	166.97	280.20	245.08				
Principal Pmt	11/10	10/01/10	8.81	8.81						
MIP/RM Disb	07/11	10/05/10				24.21-				

IMPORTANT MESSAGES

Your satisfaction with our services is very important to us. Please take a moment to respond to our Customer Satisfaction Survey by calling our automated survey number at 1-866-249-4971. This is only a survey. If you must speak with a representative, please refer to the Contact Information above. Thank you.

* BY SWITCHING TO ELECTRONIC BILLS, STATEMENTS, AND PAYMENTS, THE AVERAGE HOUSEHOLD CAN REDUCE GREENHOUSE GAS EMISSIONS BY 171 POUNDS ANNUALLY.

THAT MEANS:

- Not driving 169 miles
- Not consuming 8.8 gallons of gasoline
- Planting 2 trees and allowing them to grow for 10 years
- Preserving 24 square feet of forest land

- To learn more about PayItGreen, visit www.payitgreen.org

PayItGreen 
Good for the Environment. Good for You.

Visit www.usbankhomemortgage.com today to switch to electronic statements and payments. When completing the E-Bill registration, select the paperless bill option or on the Payment Confirmation screen, select to enroll now to receive your bill in green.

Ohio Housing Finance Agency
"WE OPEN THE DOORS TO AN AFFORDABLE PLACE TO CALL HOME"
www.ohiohome.org

EXHIBIT C

FIRSTMERIT BANK NA VS KEITH R. HAMILTON

Case Number: JL-20110751

File Date: 01/27/2011

Case Type: JUDGMENT LIEN

Judge:

[Home](#)

There are no Judges or Magistrates associated with this case.

There are no Services associated with this case.

PartiesDockets/MotionsJudges/MagistratesService

FIRSTMERIT BANK NA

GERTZ, MARC

11 SOUTH FORGE STREET AKRON, OH 44304

HAMILTON , KEITH

Volume	Page	Risk/Claim No.	IV-D	Jud. Amount	Court	Jud. Date	Interest Date	ROI	Case No	Serial No.	Released
NONE	NONE		N	\$23,374.17		01/14/2011	23.9900%	01/14/2011			

EXHIBIT D